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Federal Communications Commission
Office of the Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of

The Telephone Consumer Protection
Act of 1991

)
)
) CC Docket No. 92-90
)
)

To: The Commission

COMMENTS OF THE STUDENT LOAN MARKETING ASSOCIATION

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EXECUTIVE SUMMARY

The Student Loan Marketing Association ("Sallie Mae") strongly supports the Commission's decision to exempt debt collection calls from the restrictions, set forth in the Telephone Consumer Protection Act of 1991 ("TCPA"), against playing prerecorded messages to residential subscribers. The TCPA charges the Commission with identifying and exempting from these restrictions commercial calls which do not affect the privacy concerns which the TCPA was enacted to protect. Sallie Mae agrees with the Commission's conclusion that debt collection calls fall within this category and should be exempt by rule. The legislative history of the TCPA indicates that Congress intended that debt collection calls would not be subject to the restrictions of the TCPA.

Sallie Mae conditionally agrees with the Commission's conclusion that a separate exemption for debt collection calls is not necessary, provided the Commission adopts in its current, unrestricted form the proposed exemption for calls which do not involve the transmission of an unsolicited advertisement. Sallie Mae advises the Commission that many debt collection calls would not fall within the scope of the business relationship exemption and, therefore, loan servicers could not rely on this exemption in loan administration. Alternatively, if the Commission restricts the scope of the nonsolicitation exemption, Sallie Mae believes that debt collection calls could be protected only through the adoption of a separate debt collection exemption.

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COMMENTS OF THE STUDENT LOAN MARKETING ASSOCIATION

The Student Loan Marketing Association, by its attorneys, respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 92-176 (released Apr. 17, 1992) ("Notice").

INTRODUCTION

The Student Loan Marketing Association ("Sallie Mae"), a major holder and servicer of student loans, strongly supports the Commission's proposal to exempt debt collection calls from the restrictions, set forth in the Telephone Consumer Protection Act of 1991 ("TCPA"), against playing prerecorded messages to residential subscribers. Sallie Mae agrees with the Commission's conclusion that debt collection calls are commercial calls which do not adversely affect privacy concerns and, as such, should be exempt from the TCPA's restrictions. Sallie Mae also conditionally agrees with the Commission's conclusion that a

separate exemption for debt collection calls is not necessary, provided the Commission adopts in its current, unrestricted form the proposed exemption for calls which do not involve the transmission of an unsolicited advertisement. Alternatively, if the Commission limits the scope of this exemption, Sallie Mae believes that debt collection calls can be adequately protected only through the adoption of a separate debt collection exemption.

I. SALLIE MAE AND OTHER STUDENT LOAN SERVICERS RELY ON AUTODIALERS FOR EFFICIENT BUSINESS OPERATIONS AND COMPLIANCE WITH FEDERAL REGULATION

A. Sallie Mae.

Sallie Mae is a government-sponsored enterprise which was established by Congress in 1972 to provide necessary support to federally-sponsored guaranteed student loan programs. In accordance with its Congressional mandate, Sallie Mae provides liquidity in the approximately \$60 billion market for guaranteed student loans by purchasing and collecting student loans which are guaranteed, either directly or indirectly, by the federal government. Sallie Mae currently owns and administers approximately \$22 billion in student loans, representing approximately one-third of the entire student loan market. Sallie Mae also services student loans as agent for other lenders.

B. Due Diligence Requirements of the Guaranteed Student Loan Program.

Federal law requires Sallie Mae and other owners of guaranteed student loans to follow strict collection routines in loan servicing. The Guaranteed Student Loan Program is the largest federally sponsored student loan program.¹ It is authorized by federal statute² and is administered under the supervision of the U.S. Department of Education. Lenders making and holding guaranteed student loans must exercise due diligence in the making, servicing and collection of the loans. The Department of Education's implementing regulations³ define with specificity what "due diligence" means. Of particular concern are the collection actions which a holder of a guaranteed student loan must perform if the borrower misses a required payment.⁴ Failure to perform these required collection steps may result in loss of the loan's guarantee. In addition to requiring the mailing of written collection notices, the regulations require that the lender make diligent efforts to contact the borrower by

¹ Sallie Mae also participates in the Health Assistance Loan Program, a smaller loan program targeted at students in the health professions. The HEAL Program also is established pursuant to federal statute (20 U.S.C. 294a et seq.) Under this program, loan insurance is provided by the U.S. Department of Health and Human Services under conditions comparable to those applicable to the Guaranteed Student Loan Program described in these comments.

² See Higher Education Act of 1965, as amended, 20 U.S. Code 1071 et. seq.

³ 34 CFR Part 682.

⁴ These required collection steps are set forth in 34 CFR 682.411.

telephone. Telephone collection efforts must be attempted during the period following the time the borrower is 31 days delinquent and again during the period following the time the borrower is 61 days delinquent. If there is no answer, or if the borrower is not available, follow-up calls at differing times are required. Supplementing these mandated telephone calling efforts, many loan servicers such as Sallie Mae perform additional telephone collection efforts in order to encourage the borrower to honor his or her repayment obligation, to explain the consequences of failing to do so, and to explain that some relief (e.g., deferments and forbearances) may be available. These additional efforts are strongly encouraged by the Department of Education.

Also, if the holder of a guaranteed student loan learns that the borrower's address and/or telephone number has changed, the lender must exercise due diligence in attempting to identify the new location and/or telephone number of the borrower through the use of commercial skip tracing techniques.⁵ Under the regulations, these efforts must include, but need not be limited to, contacting relatives, references and any other individual identified in the borrower's loan file. These efforts are generally attempted by telephone. It is noteworthy that none of these other individuals are parties to the loan agreement between the lender and the borrower. Thus, there is no current or prior

⁵ See 34 CFR 682.411(g).

business relationship between the loan servicer and these individuals.

C. Automation of Collection Procedures.

The collection and skip tracing efforts described above are performed on an automated basis by all lenders and holders servicing large portfolios of guaranteed student loans. Most of these holders, including Sallie Mae, use autodialers to dial telephone numbers and a recording to hold the answerer's attention until the call can be directed to a live operator. The telephone numbers of the called parties are "queued" on the autodialer, which dials the instructed numbers in the order queued. If the line is busy or unanswered, the autodialer automatically requeues the call to be dialed later. If the call is answered, the autodialer directs the call to the next available live operator. If a live operator is not immediately available, the autodialer plays a prerecorded message which informs the answering party that Sallie Mae is calling and asks the called party to hold for the next available operator or to return the call to a number given. If an answering machine answers the call, a prerecorded message is left on the machine identifying Sallie Mae and asking the called party to return the call at the number given. Each of these messages complies with the Commission's proposed technical and procedural standards set forth in the Notice.

Autodialers increase by approximately 400 to 500 percent the number of calls which Sallie Mae can place in a single day and the number of calls which result in actual contact with the called party. By "weeding out" busy or unanswered calls, autodialers allow live operators to focus their time and efforts solely on those calls which result in contact with the called party. In fact, through the use of autodialers, Sallie Mae telephone operators are able to spend approximately 55 minutes of each hour conversing with borrowers and other persons regarding the status of individual loans.

Due to the tremendous volume of student loans which Sallie Mae services, either on its own behalf or as agent for lenders, Sallie Mae must be able to rely on autodialers for efficient servicing practices. In fact, it is practically impossible to efficiently ensure that all required collection steps are completed without the use of autodialers. Absent the technological support provided by autodialers, guaranteed student loan servicers would be stripped of the only practical means to comply with federally mandated borrower contact requirements. Loan servicers also would be stripped of the only efficient means of disseminating important loan information which individual borrowers have a pressing need to receive.

Finally, because the interest rate on guaranteed student loans is fixed under federal law, loan servicers must be able to control operating costs through the use of technological aids such as autodialers. Servicers would not be able to recoup cost

increases resulting from the inability to use autodialers by charging higher interest rates on student loans. Consequently, the loss of such technology would uniquely impact the ability of guaranteed student loan servicers to administer student loans in a cost effective manner. As entities involved in loan administration evaluate the cost effectiveness of individual loan programs, cost increases in the guaranteed student loan program could impact whether or not the servicer elects to continue to participate in this program.

II. CALLS FOR DEBT COLLECTION PURPOSES ARE COMMERCIAL CALLS WHICH DO NOT ADVERSELY AFFECT PRIVACY CONCERNS AND SHOULD BE EXEMPT FROM THE TCPA'S RESTRICTIONS

Sallie Mae strongly supports the Commission's conclusion that debt collection calls are commercial calls which do not adversely affect the privacy concerns that Congress intended to protect by passage of the TCPA and, consequently, should be exempted from the TCPA's restrictions. In fact, the legislative history indicates that Congress clearly presumed that the Commission would exempt debt collection calls in general, and calls made to collect student loans in particular.⁶

⁶ See Cong. Rec. H11312 (Nov. 26, 1991), Statement by Mr. Markey ("[The TCPA] explicitly recognizes that there are certain classes and categories of calls that consumers do not mind, and in fact would probably like to receive. Calls informing a customer that a bill is overdue ... are clearly not burdensome, and should not be prohibited."); Cong. Rec. H11310 (Nov. 26, 1991), Statement by Mr. Markey ("[The TCPA] allows the Federal Communications Commission to exempt, by rule or order, classes or categories of calls made for commercial purposes that do not 'adversely affect the privacy rights' that this section of the [TCPA] is intended to

The general intent of Congress in passing the TCPA was to protect consumers from annoying and intrusive telemarketing calls. The legislative history of the TCPA indicates that Congress was prompted to enact these restrictions partly in response to the unsolicited and randomly-generated prerecorded messages that are routinely used by telemarketers in soliciting unwilling residential subscribers. Congress also was specifically concerned with restricting telemarketing calls which capture the telephone line for a period of time after the called party hangs up.⁷

As the Commission states in the Notice, many valuable commercial uses of prerecorded messages do not fall within this category of intrusive calls. Congress recognized that there are certain categories of calls which provide important business information to the called party and which consumers do not mind receiving.⁸ To protect the ability of businesses to continue to provide this information in a technologically efficient manner, Congress charged the Commission with identifying and providing exemptions for those categories of commercial calls which do not adversely affect privacy rights. In delegating this process to

protect and that 'do not include the transmission of any unsolicited advertisement.' An example of such a use may be to leave messages with consumers to discuss their student loan ...")

⁷ See Cong. Rec. H11313 (Nov. 26, 1991), Statement by Mrs. Roukema.

⁸ See Cong. Rec. H11312 (Nov. 26, 1991), Statement by Mr. Lent.

the Commission, Congress specifically stated that its intention was to protect calls which "improve communications between individuals using modern telecommunications technologies while at the same time targeting that abusive robotic use of the technology which has become such an intrusive part of American society."⁹

Congress clearly recognized that debt collection calls, including calls made to collect student loans, should be exempt by the Commission, since such calls are not similar to the intrusive telemarketing calls which Congress was trying to restrict. Sallie Mae's experience in the debt collection industry strongly supports this position. Sallie Mae's system of debt collection is designed to minimize the use and length of prerecorded messages. Its autodialers are paced to place calls at a rate which minimizes the need to play a prerecorded "hold" message. Even though the messages are only approximately 20 seconds long, in the majority of cases a live operator picks up the line before the message is completed. Called parties hang up on the message less than ten percent of the time (even though the message suggests that the called party should hang up and return the call later if it would be more convenient to do so), and complaints regarding use of the prerecorded message are extremely rare.

⁹ Cong. Rec. H11312 (Nov. 26, 1991), Statement by Mr. Markey.

III. SALLIE MAE CONDITIONALLY AGREES WITH THE COMMISSION'S
CONCLUSION THAT A SEPARATE EXEMPTION FOR DEBT COLLECTION
CALLS IS NOT NECESSARY

As noted above, Congress created the presumption that debt collection calls would be exempt from the TCPA's restrictions and empowered the Commission to implement the appropriate exemption. In the Notice, the Commission indicated that it intended to provide an exemption covering debt collection calls in two ways. The Notice suggests that debt collection calls would fall within the scope of the exemption for calls to persons with whom the calling party has a current or prior business relationship, as well as the exemption for calls which do not involve the transmission of an unsolicited advertisement. The Commission has requested comment on whether such exemptions would provide adequate protection for debt collection calls or whether, alternatively, a separate exemption for debt collection calls would be required. Sallie Mae does not believe a separate exemption is necessary, provided the Commission adopts the proposed exemption for nonsolicitation calls in its current, unrestricted form.

A. The Business Relationship Exemption Would Only Protect
Debt Collection Calls Placed To Borrowers and Endorsers

As described above, the bulk of debt collection calls are made to borrowers and loan endorsers, with whom Sallie Mae has a contractual relationship in the form of a note. In making this statement, Sallie Mae assumes that the Commission includes within

the definition of "business relationship" those relationships which arise by contract assignment. Sallie Mae purchases all of its loans on the secondary market. In these instances, Sallie Mae succeeds to the rights of the lender in enforcing its obligations under the note. Therefore, to enable loan servicers to rely on the business relationship exemption in placing autodialer calls to borrowers, the term "business relationship" should clearly include relationships which arise from contract assignments.

B. The Exemption For Calls That Do Not Involve the Transmission of Unsolicited Advertisements Would Protect Other Debt Collection Calls

Even though the business relationship exemption would protect calls placed to borrowers and endorsers, it would not protect a variety of other calls which loan servicers are required to place in connection with loan administration. First, as described above, loan servicers must contact a number of other persons, such as relatives and references, with whom the servicer generally does not have a contractual relationship. Second, loan servicers must be able to return calls to individuals who call the servicer requesting information. For example, parents often call to request information about loans to their children or other individuals call with general inquiries about a specific

loan or loan program.¹⁰ Finally, although Sallie Mae and other loan servicers make every reasonable effort to update individual borrower files, servicers may attempt to contact borrowers and other persons at outdated or otherwise inaccurate telephone numbers. In each of these cases, a "business relationship" may not exist between the called party and the calling party. To ensure these debt collection calls are protected, therefore, loan servicers need to be able to rely on the unrestricted exemption for calls which do not involve the transmission of an unsolicited advertisement.

CONCLUSION

Sallie Mae supports the Commission's determination that debt collection calls are commercial calls which do not affect privacy concerns. We strongly agree with the Commission's conclusion that, as such, debt collection calls should be exempt from the TCPA's restrictions against playing prerecorded messages to residential subscribers. The legislative history of the TCPA indicates that Congress intended that debt collection calls would not be subject to the restrictions of the TCPA. Sallie Mae also conditionally supports the Commission's conclusion that a separate exemption for debt collection calls is not necessary,


¹⁰ Sallie Mae assumes that any such call placed in response to a request for information would be deemed "solicited" and, consequently, the discussion of additional loan programs on such calls would not fall within the definition of an "unsolicited advertisement".

provided the Commission adopts in its current unrestricted form the exemption for calls which do not involve the transmission of an unsolicited advertisement. Although certain debt collection calls, such as those to borrowers and endorsers, would be covered by the business relationship exemption, loan servicers must call a variety of other individuals with whom the servicer may not have a business relationship. Therefore, if the Commission limits the scope of the nonsolicitation exemption, debt collection calls could be protected only through enactment of a separate debt collection exemption.

Respectfully submitted,

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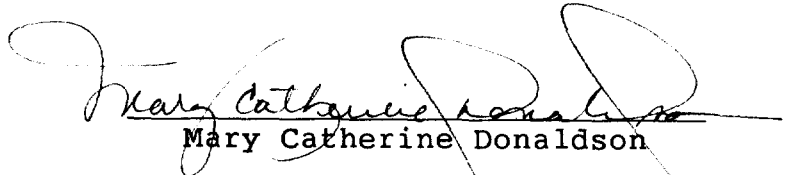
CERTIFICATE OF SERVICE

I, Mary Catherine Donaldson, hereby certify that on this 26th day of May, 1992, a copy of the foregoing "Comments of the Student Loan Marketing Association" was served by hand on the following:

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